Boatyard General Permit
Advisory Committee
May 7, 2003, Meeting Minutes

Attendees:

Name	Affiliation	Street Address	City & Zip	Phone	E-Mail
Barry Kellems	HartCrowser	1910 Fairview Avenue E	Seattle 98102-3699	206-324-9530	barry.kellems@HartCrowser.com
Dean Shaughnessy	Port of Everett	P.O. Box 538	Everett 98206	425-259-6001	deans@portofeverett.com
Michelle Kruse	NW Marine Trade Association	1900 N. Northlake Way, Suite 233	Seattle 98103	206-634-0911	kruse@nmta.net
John Papajani	Seaview Boatyard	4701 Shilshole Avenue NW	Seattle 98107	206-789-3030	phil@seaviewboatyard.com
Sue Joerger	Puget Soundkeeper Alliance	4401 Leary Way NW	Seattle 98107	206-297-7002	suejoerger@pugetsoundkeeper.org
Tim Goodman	WA Dept. Natural Resources	1111 Washington ST SE	Olympia 98504-7027	360-902-1100	tim.goodman@wadnr.gov
Cynthia Balogh	King County Hazardous Waste	130 Nickerson Street, #200	Seattle 98109-1658	206-263-3075	cynthia.balogh@metrokc.gov
John Drabek	WA Dept of Ecology, NWRO	3190 - 160th Ave. SE	Bellevue 98008-5452	425-649-7293	jdra461@ecy.wa.gov
Donna Ortiz de Anaya	WA Dept of Ecology, NWRO	3190 - 160th Ave. SE	Bellevue 98008-5452	425-649-7276	dort461@ecy.wa.gov
Greg Cloud	WA Dept of Ecology, SWRO	300 Desmond Drive	Lacey 98503	360-407-6291	gclo461@ecy.wa.gov
Dewey Weaver	WA Dept of Ecology	PO Box 47600	Olympia 98504-7600	360-407-6443	duwe461@ecy.wa.gov
Randall Marshall	WA Dept of Ecology	PO Box 47600	Olympia 98504-7600	360-407-6445	rmar461@ecy.wa.gov

Agenda:

10:00 - Introductions
10:30 - Review of minutes from March 31 meeting
11:00 - Update and discussion of a "Clean Marinas" program for WA State
11:30 - Need for a marina NPDES permit
12:00 - Lunch
1:00 - A water quality-based limit, performance-based limit, or monitoring with no limit for copper?
1:30 - Boatyard locations and receiving waters
2:00 - Boatyard training and technical assistance needs such as sampling
2:30 - Prompt adjournment

Meeting:

The meeting began with a summary of the last meeting's minutes. There were few comments on the minutes and the discussion moved on to marinas. The activities potentially occurring in marinas of most interest to the committee were those activities that should be conducted onshore in boatyards such as scraping of hulls coated with soft paints, painting, pressure washing, or engine replacement. These "boatyard" activities are illegal to conduct in marinas where they can adversely affect water quality. The first observation about marinas was the difficulty in inspecting activities around boats, especially activities happening underwater or in boathouses. Since in-water scraping of hulls having hard paints is OK, it is necessary to not only be aware of any divers at work but also of the type of paint used on individual boats. This difficulty is greatest for

Dept. of Ecology inspectors who are at a marina only occasionally and will therefore encounter illegal activities only by chance unless someone from the marina makes a complaint. Marina operators are regularly at the marina and have staff to assist in keeping track of activities by boat owners. However, even marina operators and their staff cannot be everywhere at all times.

Dean Shaughnessy asked the attendees at the April meeting of the Pacific Coast Congress of Harbor Masters and Port Managers what their opinion might be of a marina N.P.D.E.S. general permit. Dean reported that the publicly operated marinas were somewhat accepting of a permit but that the privately operated marinas were opposed. Michelle Kruse reported that her conversations with marina operators revealed that they generally didn't like having "boatyard" activities conducted in their marinas but were opposed to anything like a permit which would hold them directly responsible for restricting such activities. It has been noted in past advisory committee meetings that marina owners are already liable for the activities of others within the marinas. It has also been noted in past meetings that, in addition to pollution prevention, the removal of "boatyard" activities onto boatyards will help boatyards pay for pollution controls for these activities. Better education of marinas on their liabilities and on their relationship to boatyards might help improve the situation.

A very important observation was that WDNR is the land owner for marinas and can easily be included in any fine or other enforcement action. WDNR is also responsible for contaminated sediments under marinas.

Another observation was that WDNR has considerable influence over marinas through aquatic lands leases. Tim Goodman offered to bring copies of a typical lease to the next meeting along with a staff person responsible for writing and enforcing leases. Tim also mentioned a study that was done by Eric Crecelius to quantify sediment deposition and contamination from marinas located where there are no other nearby sources (possibly John Wayne and Port Townsend marinas). Barry Kellems offered to find a copy for distribution at the next meeting. We will use this information in recommending improvements to leases containing language that may be too general in requiring marinas to implement BMPs when more specificity on subjects like divers may encourage better compliance. The committee will also use this information in trying to reach a degree of consensus on the need for a marina permit.

In order to remind marinas and divers of restrictions on the type of hull paint which can be scraped in the water, resending the advisory on divers makes sense now. Other ideas voiced at the meeting included sending a cover letter explaining the importance of the advisory on divers and of other marina BMPs. We certainly want to coordinate with any Clean Marina Program launched here. There was a meeting on May 13th on Clean Marinas sponsored by Washington Sea Grant and POSPET (Pacific Oil Spill Prevention Education Team). Randall Marshall attended and will give a summary at the next advisory committee meeting. Cynthia Balogh was a presenter at the meeting.

Advisory committee discussions began to focus away from marinas. Information was presented on the true costs of pollution prevention measures such as vacuum sanders and hard bottom paints. Boats with hulls painted with hard paints need hauled out and repainted less often than those boats with soft or ablative paints. Vacuum sanders need fewer changes of sanding pads and much less effort in area cleanup after sanding. The cheaper alternatives may actually be more expensive over time. The Dept. of Ecology has attempted in the past to quantify these differences in cost.

The final discussion topic focused on evaluating which approach to take in the new permit for limiting copper. The choices are a water quality-based copper limit, a performance-based copper limit, and a copper "benchmark" which would be used to trigger extra efforts at BMP implementation, improving sampling, and closer regulatory scrutiny. The same BMP requirements would be included with each of the copper limitation alternatives. Due to some confusing wording carried over from the last meeting, some participants may have gotten the impression that BMPs would get special emphasis in the copper "benchmark" alternative. It also needs to be made clear that monthly average permit limits would not work due to a combination of sampling frequency, sampling instructions, and the uncertainty of rain events meeting the criteria in the sampling instructions. Any limit would have to be a daily maximum.

None of the approaches generated much support. Penalties or other enforcement actions could not be done in response to exceedances of a copper "benchmark" except maybe with a lot of extra effort. The usual percentiles (95 or 99) used in deriving performance-based limits yield copper concentrations that are clearly not protective of water quality. In addition, the performance of a single discharge is usually used in setting a performance-based limit and to do so for boatyards would involve analyzing monitoring data from a large number of discharges from many boatyards with differing histories and characteristics. The water quality-based copper limit concept would involve three alternative approaches of its own. Each of them has a main flaw. A water quality-based copper limit could be set relative to a standard mixing zone but mixing zones are site-specific concepts which don't fit well in general permits which cover a wide variety of discharges from a wide variety of facilities ending up in a similar variety of receiving water situations. A water quality-based copper limit could be set relative to site-specific mixing zones but that would be a lot of work for the Dept. of Ecology to implement and potentially expensive for boatyards if dilution studies are needed. A site-specific mixing zone for each boatyard is clearly beyond the resources of the Dept. of Ecology and the boatyards. The water quality criteria for copper could be set as water quality-based limits in the stormwater discharges themselves (without allowing for dilution) but this would be very expensive and overly protective in many circumstances. A water quality-based limit set at the water quality criterion for copper would also be a gamble in that it is not clear that such a limit could be met by boatyards at any affordable cost.

A related discussion focused on whether mixing zones are "required" in water quality-based permitting. They clearly are not. WAC 173-201A-100 has conditions which must be met in order to be eligible for a mixing zone. 40 CFR 122.44(d)(1)(ii) requires that dilution in the receiving water be considered in permitting "where appropriate." Mixing zones, like N.P.D.E.S. permits themselves, are commonly granted but are not a right. However, it is also clear that the water quality criteria were established conservatively with the intention that dilution be used to cause effluent limitations to reflect actual environmental exposures. (Indeed, the copper criteria are sometimes modified using water effects ratios or the biotic ligand model in order to reflect receiving water chemistry as well.)

Two suggestions were offered as solutions to some of the copper limitation difficulties. One suggestion was that, instead of basing the percentile for deriving a performance-based limit on number of samples, the percentile should be based on the number of boatyards. In other words, a 95^{th} percentile limit would be set so that approximately 5% of the boatyards could not have met it in past samples. A more likely percentile with this approach would be the 85^{th} or 75^{th} percentile. Another suggestion was to use existing dilution studies to get ballpark dilution factors for the water bodies which have boatyards (Ship Canal, Commencement Bay, Port of Everett, etc.), and set water quality-based copper limits based on the water quality criterion and these dilution factors; mixing zones would not be granted. We need to discuss these ideas further at the next meeting.

A reminder was given that source controls may not be enough at some boatyards due to historic contamination around the yards. An example was given of a wood treater which had put all activities under roof and surprisingly still had very toxic stormwater.

The following page contains an e-mail from Sue Joerger on the subject of copper limitations:

-----Original Message-----
From: Sue Joerger [mailto:suejoerger@pugetsoundkeeper.org]
Sent: Wednesday, May 14, 2003 4:47 PM
To: Marshall, Randall
Subject: Boatyard Permit

Hi Randall:

I just talked to Richard Smith about our recommendations for the boatyard permit. I apologize that I wasn't prepared at the meeting last week.

According to the Clean Water Act, Section 402(p)(4)(a) industrial stormwater must comply with water quality standards within three years. Our position is that the boatyard permit should set final water quality effluent limitations that come into effect in 3 years after the issuance of the permit. In the interim, performance based limits should be set at a level that will help move the yards towards compliance. Also, there should be a compliance schedule to implement BMPs including dustless sanders, yard sweeping, and whatever else might be needed to achieve compliance.

I recognize that this is a tall order, however, it seems like everyone is convinced that dustless sanders are the solution.
I watched one in action at Seaview West recently and I was really surprised at how effective it seemed. It would be great if we could identify a yard that was doing a good job at BMPs and using dustless sanders to see what their monitoring results are...

Thanks!

Sue